

FILED  
COURT OF APPEALS  
DIVISION II

NO. 53892-0 - II

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IN THE COURT OF APPEALS STATE OF WASHINGTON  
FOR THE STATE OF WASHINGTON BY  
DIVISION II

STATE OF WASHINGTON  
Respondent

v.

RAMIL SERRANO  
Appellant

STATEMENT OF ADDITIONAL GROUNDS  
FOR REVIEW

Ramil Serrano (appellant)

Ramil Serrano  
DOC # 413716  
Coyote Ridge Corrections Center  
PO Box 769  
Connell, WA 99326

THE COURT OF APPEALS STATE OF WASHINGTON  
DIVISION TWO

State of Washington,  
Respondent,  
vs.  
Ramil Serrano,  
Appellant.

Case no. 53892-0-II

STATEMENT OF ADDITIONAL  
GROUNDS FOR REVIEW

I, Ramil Serrano, have received and reviewed the opening brief prepared by my attorney. Summarized below are the additional grounds for review that are not addressed in that brief. I understand the court will review my Statement of Additional Grounds for Review when this appeal is considered on the merits.

Additional Ground 1

Mr. Serrano's (Appellant) Fifth Amendment of the United States Constitution and Washington State Constitution Article 1 section 9, Double Jeopardy rights were violated.

## STATEMENT OF THE CASE

Mr. Serrano was charged in Grays Harbor County Superior Court on October 12, 2018 with first degree rape of a child, contrary to RCW 9A.44.073, and first degree child molestation, contrary to RCW 9A.44.083. CP 1-3.

The State alleged that during the period between April 1, 2016 and May 31, 2018, Mr. Serrano had sexual intercourse and sexual contact with S.S. CP 1-3. Mr. Serrano waived his right to a jury trial on January 7, 2019. CP 18. The case came on for bench trial on January 23 and 24, 2019, before the Honorable David Mistachkin.

1RP at 15-166, 2RP at 171-221.

After the defendant waived his right to a jury trial the superior court for Grays Harbor County No. 18-1-0591-14, David Mistachkin, J., conducted a bench trial and, on January 24, 2019, entered a judgment after finding the defendant guilty of rape of a child in the first degree and child molestation in the first degree.

Findings of the court that the alleged victim in this matter, initials S.S., Sunya Sem, was the victim of both crimes of rape of a child in the first degree and child molestation in the first degree. Mr. Serrano, by all accounts, had access to the child alone on a number

of occasions. The victim testified credibly that Mr. Serrano, the defendant, put his penis on her bare skin, which without penetration is the act of child molestation in the first degree. Clearly, that act was done for sexual gratification purposes. Clearly that's sexual contact under the statute, so that act — any one act of him just putting his penis on the skin of the vagina of S.S. is child molestation in the first degree. So, therefore, I find him guilty of that offense.

As to the rape of a child in the first degree, that — the difference between that offense and child molestation is, of course, penetration. That is the only difference. The question for the court on that charge was whether or not there was sufficient evidence that the defendant penetrated S.S. and I find that he did. The testimony by — again, by the victim was credible. And I want to say that I'm mindful that she did struggle to — to — to testify. There's no doubt about that. ZRP at 212-213.

The — the mother and the aunt and the nurse — and Ms. Wahl didn't add much to this equation, quite frankly. The medical findings were normal, which is to be expected. That's — that's pretty much every case. 97 percent or whatever it is, pretty high. So that was not

pervasive one way or the other. Neither was the issues involving the mom. I think that it's - it's clear to me that the access that Mr. Serrano had to the child was with permission of the mother and I - to be honest, I question that decision. I question that - why the child was left alone with a man that's not family, not relation, and with kind of lack of really knowing the person all that well. But that's for a different day. That's a different discussion not relevant to this analysis.

So the bottom line is. Mr. Serrano on multiple occasions, but certainly at least one occasion, committed child molestation in the first degree and rape of a child in the first degree, there's no question in my mind. I believe the State proved beyond a reasonable doubt that the defendant committed both of these offenses. And honestly, I think they occurred on multiple occasions. There's just no way that it was just once or even twice by - as far as I can tell, it happened maybe not ten times like the victim testified, but certainly on multiple occasions. But that's not before the court. There was only one count of each and so that's what's before the court. So the defendant is guilty of both crimes, that's the bottom line. 2 RP at 215-216.

## ARGUMENT

Mr. Serrano (appellant) was convicted of first degree rape of a child (count 1) and first degree child molestation (count 2) to the Superior Court of the State of Washington for Grays Harbor County, conducting a bench trial, violates Mr. Serrano's Fifth Amendment of the United States Constitution and Washington State Constitution Article 1 § 9, double jeopardy rights because the trial court judge could have convicted Mr. Serrano of child rape based on one of the same incidents that formed the basis for the child molestation convictions.

The Washington Supreme Court analyzes a double jeopardy claim, first examines the statutory language to see if the applicable statutes expressly permit punishment for the same act. If the statutes do not speak to multiple punishments for the same act. The Supreme Court next applies the same evidence analysis. Even if the two statutes pass the same evidence inquiry, multiple convictions may not stand if the legislature has otherwise clearly indicated its intent that the same act will not be punished under both statutes.

Washington follows the same evidence rule which the Supreme Court of Washington adopted in 1896. The defendant double jeopardy rights are violated if he or she is convicted of offenses that are identical both in fact and in law, offenses are the same in fact when they arise from the same act, offenses are the same in law when proof of one offense would also prove the other offense. The same evidence rule is sometimes referred to as the same elements test. Double jeopardy may be violated when a defendant receives multiple convictions for a single offense (regardless of whether concurrent sentences are imposed). Double jeopardy concerns arise in the presence of multiple convictions, regardless of whether resulting sentences are imposed consecutively or concurrently.

In this case, there is a potential double jeopardy violation where the only evidence of sexual intercourse supporting a count of child rape is evidence of sexual contact involving one person's sex organs and the mouth or anus of the other person, that single act of sexual intercourse if done for sexual gratification, is both the offense of molestation and the offense of rape. In this case the two offenses are not separately punishable.

they are the same in fact and in law because all the elements of the rape as proved are included in molestation and the evidence required to support the conviction for molestation also necessarily proves the rape.

A person is guilty of rape of a child in the first degree when the person has "sexual intercourse" with another who is less than twelve years old and not married to the perpetrator and the perpetrator is at least twenty four months older than the victim. RCW 9A.44.073(1).

"Sexual intercourse" - also means any act of "sexual contact" between persons involving the sex organs of one person and the mouth or anus of another whether such persons are of the same or opposite sex. RCW 9A.44.010(1)(c).

A person is guilty of child molestation in the first degree when the person has, or knowingly causes another person under the age of eighteen to have "sexual contact" with another who is less than twelve years old and not married to the perpetrator and the perpetrator is at least thirty-six months older than the victim. RCW 9A.44.083(1).

"Sexual contact" - means any touching of the sexual or other intimate parts of a person done for the purpose of gratifying sexual desire of either party or a third party. RCW 9A.44.010(2).

The double jeopardy doctrine protects defendants against prosecution oppression. The "Fifth Amendment to the United States Constitution provides no person shall be subject for the same offense to be twice put in jeopardy of life or limb". Washington Constitution Article 1 § 9 mirrors the federal constitution stating no person shall be twice put in jeopardy for the same offense."

Criminal Law § 22, 29, 31 - guaranty against double jeopardy, Washington's double jeopardy clause offers the same scope of protection as the federal double jeopardy clause.

Both prohibit:

- 1.) a second prosecution for the same offense after acquittal.
- 2.) a second prosecution for the same offense after conviction, and
- 3.) multiple punishments for the same offense imposed in the same proceedings.

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the Supreme Law of the Land; and the judges in every State shall be bound thereby, anything in the Constitution or Laws of any State to the Contrary notwithstanding. Article VI Clause 2. of the United States Constitution.

Every judge of the Supreme Court, and every judge of a superior court shall, before entering upon the duties of his office, take and subscribe an oath that he will support the Constitution of the United States, and the Constitution of the State of Washington, and will faithfully and impartially discharge the duties of judge to the best of his ability, which oath shall be filed in the office of the secretary of state. RCW Constitution of the State of Washington, Article IV - Judiciary, § 28 - Oath of Judges.

#### CONCLUSION

For the reasons stated above, Mr. Serrano respectfully requests this reviewing court reverse both convictions for violation of Fifth Amendment of the United States Constitution and Washington State Constitution Article 1 section 9, double jeopardy rights guaranteed to the United States citizens, and remand for dismissal of the charges with prejudice.

Dated : July 5 , 2020

Respectfully submitted,

  
Ramil Serrano (appellant)

## CERTIFICATE OF SERVICE

The undersigned certifies that on July 5, 2020 that this Appellant's Statement of Additional Grounds for review was sent by Legal Mail to Erin Riley, Grays Harbor County Prosecutor's Office and to Peter B. Tiller, THE TILLER LAW FIRM attorney's at law and copies were mailed by certified with return receipt, to the following:

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RAMIL SERRANO (APPELLANT)